

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

HELEN C. SHECKELS, SURVIVING EXECU-
trix of Theodore Sheckels, deceased,
appellant,

No. 144.

v.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from a judgment rendered under the act of June 16, 1880 (21 Stat. 284), providing for the settlement of all outstanding claims against the District of Columbia and conferring jurisdiction on the Court of Claims.

One Peter McNamara had several contracts with appellee for grading and filling certain streets in the city of Washington. These contracts, and extensions thereof, were numbered 415, 515, 716, and 850. (Rec. 20.)

McNamara, being indebted to Theodore Sheckels, appellant's testator, for advances made for the purpose of assisting the former in carrying out his contracts, executed and delivered to the latter as security an instrument purporting to be an assignment of the said McNamara's interest in and to contract 415, and extensions thereof, up to the amount of the indebtedness, and power of attorney to make effective said assignment. (Rec. 22, 23.) Powers of attorney were also executed by McNamara and delivered to appellant's testator to collect and receipt for all moneys, certificates, and bonds that might become due for work done under extension of contract 716. (Rec. 23, 24.)

Thereafter McNamara brought suit seeking adjudication of his alleged claims under contracts 415, 515, 716, and 850. These suits were consolidated with the one in which the present appeal is taken (known as No. 292, D. C.), which was filed by Theodore Sheckels as assignee of Peter McNamara. (Rec. 21.)

They were tried together before a referee, who reported that there was due from appellee, the District of Columbia, under said contracts for work at contract rates, the total sum of \$14,418.77; that McNamara had assigned to Theodore Sheckels ~~all his interest in contracts 415 and 716, amounting to~~ \$7,306.25, which was a part of the said sum of \$14,418.77. (Rec. 21.)

Appellee interposed as a defense its counterclaim of \$21,123.18 for overpayments made by it

to McNamara for work done under another contract, No. 248, which was not assigned to Sheckels. The referee found that appellee was entitled to judgment for \$21,123.18, the amount of the counterclaim, less \$14,418.77, the amount which he had found to be due under the four previously mentioned contracts. (Rec. 21.)

Sheckels excepted to the report of the referee as to the finding for appellee on its counterclaim, and the court decided that the effect of the act of February 13, 1895 (28 Stat. 264) was to extinguish the counterclaim. Thereupon, on June 22, 1896, the court, after rendering judgment in favor of McNamara for the amount to which he was deemed entitled, entered judgment for the executrix of Sheckels, for \$7,306.25 with interest from April 1, 1876. (Rec. 22.)

The Supreme Court reversed the decision of the Court of Claims and remanded the cases for further proceedings on February 15, 1897. (Rec. 22; *D. C. v. Johnson*, 165 U. S. 330.)

Before any action was taken under the mandate of the Supreme Court, the act of February 15, 1895, was repealed by the act of March 3, 1897 (29 Stat. 669). (Rec. 22.)

On April 20, 1914, appellant filed a motion for judgment in her favor in the sum of \$7,306.25, due and payable as of April 1, 1876, under the aforesaid mandate of the Supreme Court (Rec. 19), and the same was allowed.

The court also found that though the referee had reported that no acceptance of the assignment by the District had been established "*it appears that said Sheckels receipted for certain certificates of indebtedness under said contracts and extensions as 'attorney for Peter McNamara,'*" (Rec. 24); that the indebtedness of McNamara to Sheckels comprised a judgment against the former which had been paid by Sheckels, two due bills and two promissory notes the principal amounts of which aggregated \$3,883.54, which with interest computed to June 22, 1896, "*amounts to more than the sum claimed*" (Rec. 24).

The court gave appellant judgment for \$7,306.25, and found that the total sum of the items set forth in Finding XI (Rec. 24) was due and payable by the District of Columbia April 1, 1876. It directed that the judgment should bear interest only from the date of its rendition, being February 21, 1916, payable as provided by section 6 of the act of June 16, 1880 (21 Stat. 284).

Appellant's contention is that the assignment and powers of attorney carried the entire interest of McNamara in the contracts and gave appellant the right (Rec. 5) to collect and receive "*all moneys, bonds, certificates, or other evidence of indebtedness due from the said District on account of any and all work done by the said McNamara*" under contracts 716 and 415; that this indebtedness (Rec. 5), amounting to \$6,932.15, was made up of several

items bearing interest at different dates; that the items were, by the act of June 16, 1880 (21 Stat. 284), and acts amendatory thereto, payable in bonds with coupons attached bearing interest at the rate of 3.65 per cent per annum, which interest was to run from the date when the principal was due and payable; that the court rightly found the amount of McNamara's interest in the said contracts to be \$7,306.25, notwithstanding that he prayed for \$6,932.15, but was in error in finding that interest began from date of judgment, for this cut off his right to the coupons attached to the bonds with which the claim was to be paid.

The Government's position is that the assignment and powers of attorney were given as collateral security and were in the nature of a mortgage securing the payment of debts from McNamara to Sheckels; that the assignment and powers of attorney provided for payment of the amounts advanced, together with their prescribed interest (Finding XI, Rec. 24), until the total of the principal sums and interest should equal McNamara's equities in said contracts 716 and 415 and no more; that the principal sums and interest were more than McNamara's equities. The court, therefore, made no error in allowing only up to McNamara's equities.

ARGUMENT.

The assignment and powers of attorney were in the nature of collateral security for the payment of moneys advanced by Sheckels to McNamara. Sheckels's equity was limited to the total of these several advances and interest agreed upon (Finding XI, Rec. 24), the principal sums, and interest not to exceed McNamara's interest in the contracts.

This case has been very much confused by appellant owing to the fact that the amount of the judgment allowed by the court—\$7,306.25—happens to be the amount of McNamara's interest in contracts 716 and 415. The Government agrees at the outset with the findings of the lower court ~~stating~~ in substance that the District of Columbia acquiesced in the terms of the purported assignment and powers of attorney from McNamara to Sheckels in contracts 716 and 415. It appears (Rec. 24, Finding X) that Sheckels receipted for certain certificates of indebtedness under said contracts and extensions as "attorney for Peter McNamara." The judgment of the court fixed the amount at \$7,306.25, the judgment to bear interest only from the date of its rendition and to be payable as provided by section 6 of the act of June 16, 1880 (21 Stat. 284) as amended by the act of March 3, 1881 (21 Stat. 466).

From the foregoing it is evident that the lower court found that the District of Columbia recog-

nized that there had been security given by McNamara to Sheckels in order to protect Sheckels for advancements made by him to McNamara, and that the District of Columbia had estopped itself from setting up any counter claim by reason of having recognized the contents of the assignment and powers of attorney. The gist of this case can only be determined by reference to the assignment and powers of attorney. Exhibit G, which purported to be an assignment and power of attorney from McNamara to appellant (Rec. 23, Finding IX), states that it was given in order that McNamara might "*secure to said Sheckels the payment of such note and interest and all other advances that he might make,*" and, again, "*for the purpose of paying the said Sheckels the above-named note as also any and all moneys that he, the said Sheckels, may advance to me from time to time as the work progresses up to the completion of said streets * * *.*" Exhibit H was a power of attorney to collect and receipt for moneys, certificates, or bonds that might become due McNamara under extension of contract 716. (Rec. 23, 24.) Exhibit I was a similar power of attorney with respect to extension of contract 716, and Exhibits K and L with respect to extensions of contract No. 415. (Rec. 24.) The language used in the assignment and powers of attorney obviously does not transfer to Sheckels absolute title of McNamara's entire interest in the contract. It

simply gives Sheckles a collateral security for said advances in the nature of a mortgage. What the court has done in reality has been to transfer by foreclosure the amount of the notes and moneys advanced, together with the interest which was stated in the notes and advances when made. It will be found (Finding XI, Rec. 24) that these various amounts were five in number, being a judgment against McNamara which was paid by Sheckels and which bore interest at the rate of 6 per cent per annum; a due bill signed by McNamara and carrying interest at 10 per cent; a promissory note bearing interest at 10 per cent; a promissory note bearing interest at 8 per cent; and a due bill of McNamara's bearing interest at 10 per cent. The equity which Sheckels got by the purported assignment and powers of attorney was the amount of these sums up to the total of McNamara's interest in the said contracts. If the total amount of these items plus interest had aggregated less than \$7,306.25, the court would have given judgment for less than \$7,306.25, whereas the items plus interest being more the court gave \$7,306.25, because it read the assignment and powers of attorney correctly as limiting the amount of the security which appellant had thus received to McNamara's equity in the contracts, to wit, \$7,306.25. The Court of Claims found that the total amount of the notes and advances was \$3,883.54 and that interest on the several amounts as

set forth in Finding XI, together with the total of the principal sums computed to June 22, 1896, the date of the entering of the first judgment, amounted to more than McNamara's interest in the said contracts. Hence it limited its judgment to \$7,306.25 and found that the judgment should bear interest from the date of its rendition.

It has been said that appellant is confused because the amount of the judgment happened to be the same as the amount of McNamara's interests in contracts 716 and 415. This is evidenced by references in the petition. It is stated therein (Rec. 5) "that the said assignment and powers of attorney were given to your petitioner to secure to him the repayment of the money so advanced by him and to enable him to collect from the said District and reimburse himself for the moneys so advanced by him from time to time." This allegation taken alone discloses appellant as understanding that the assignment was only in the nature of a collateral security for moneys advanced and not an unqualified transfer of all title in said contracts. But appellant later, on the same page, contradicts the foregoing quotation by alleging that "he is informed and believes and so represents that the instrument mentioned in the twelfth paragraph of this petition and filed herewith as Exhibit G is an absolute assignment to him and confers upon him the right to collect and receive from the said District all moneys, bonds, certificates, or other evidence of indebtedness due

from the said District on account of any and all work done by the said McNamara under the provisions of the contract," etc.

By reference to section 16 (Rec. 5) of the petition, it appears that appellant was claiming for a series of amounts due to McNamara on her testator's contracts with the District of Columbia and totaling the sum of \$6,932.15. In the prayer of the petition judgment is asked for said sum, with interest from the dates on which the items composing the total were due. While, therefore, in the fourteenth paragraph of the petition appellant gives two diametrically conflicting statements as to her understanding of what the purported assignments meant, she now tries to recover on the theory that said assignment and powers of attorney actually transferred all interest of McNamara in the said contracts to Sheckels, and this regardless of whether the indebtedness of McNamara to Sheckels equaled McNamara's interest in said contracts.

What the court did was not to give her McNamara's interest in the contracts, but McNamara's indebtedness to Sheckels plus interest up to the amount of McNamara's equities in the contracts.

If appellant's contention were sustained, she would be receiving not only the principal sums advanced, to wit, \$3,883.54, together with the interest on the various items as set forth in Finding XI up to \$7,306.25, but she would also be receiving in-

terest upon the interest already mentioned, from April 1, 1876, until the present time, by means of the coupons attached to the bonds, a situation which was never contemplated and for which the Court of Claims would not have power to render judgment.

Respectfully submitted.

HUSTON THOMPSON,
Assistant Attorney General.

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